IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 424 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DHULABHAI MANORBHAI PARMAR

Appearance:

MR AJ DESAI, APP for Appellant

MR JB DASTOOR for Respondent

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 04/05/2004

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by the State against judgment and order of learned Sessions Judge, Naiad, delivered on 4th of December, 1985 acquitting present respondent - Dhulabhai Manorbhai Parmar, original accused in Sessions Case No. 83 of 1985, for the charges levelled against the appellant under Sections 302, 323 of IPC and under Section 135 of the Bombay Police Act.

2. Incident in question occurred on 7th of July, 1985 at about 6.30 to 7.00 p.m. at village Bochasan, District Kheda. Near the house of one Raijibhai Dhulabhai, Punambhai Hemabhai Parmar deceased in this case, and Shakarabhai Shivhaibhai PW6 and Nanabhai Shivabhai PW-5 both injured in the incident, were sitting. While these persons were sitting and smoking huka, present respondent accused came there and confronted with Shakarabhai and asked that why was he showing currency note of Rs. 10 to wife of one Bhimsinh, who was working with respondent- accused, and stating this, respondent - accused snatched a stick from nearby tree and inflicted one blow on Shakarabhai. Deceased Punambhai Hemabhai intervened and scolded respondent accused that why was he beating Shakarabhai. Therefore, respondent - accused inflicted two blows of stick on the head of Punambhai and one blow to PW-5 Nanabhai Shivabhai on neck. Thereafter, son of the deceased came to the spot. Deceased was seriously injured and was taken to his house and thereafter was taken to one private nursing home named as Ira Medical Nursing Home on 8th of July, 1985 at about 12.40 p.m. Since the case was serious, PW-2 Dr. Girishbhai Gajanand of Ira Nursing Home, Borsad, sent Punambhai to SSG Hospital at Baroda on 10th of July, 1985 and complaint of the incident which is on record at Exh.16 came to the filed by Bachubhai Punambhai, son of the deceased on 11.7.1985 at about 4.00 p.m. before Borsad Police Station about the incident. Punambhai died on 15th of July, 1985 at 4.45 p.m. in Baroda SSG Hospital during treatment. Complaint being filed, investigation was entrusted to PW-11 Pankajkumar Chandrashanker Joshi, PSI, Borsad Police Station. He submitted charge sheet against respondent accused. The case was committed to the Court of Sessions. The learned Sessions Judge framed charges against respondent accused vide Exh.1 on 2.11.1985. On pleading not guilty, the prosecution examined as many as 11 witnesses and produced documentary evidence on record. After recording the statement of the respondent - accused under Section 313 of the Criminal Procedure Code, learned Sessions Judge, Kheda at Nadia heard both the learned Counsels for the parties and came to acquit the respondent - accused of

the charges levelled against him and hence this Appeal.

3. Learned APP Mr.A.J.Desai for the appellant State and Mr.J.B.Dastoor for the respondent were heard.

4. The prosecution examined PW-1 Dr.Kishore Pramodray Desai at Exh.8. According to him though there were no visible external marks of injury on the dead body but when he examined the dead body for the postmortem on 15.7.1985 at 9.00 a.m. he found internal injuries on the brain, which was sufficient in ordinary course of nature to cause death, and the death was due to intracranial subdural and extra-dural haemorrhage associated with fractured skull. In cross-examination, he admitted that the above internal injuries were possible if the head comes in contact with hard and blunt substance as a result of fall from 10 feet to 15 feet. He submitted the Postmortem Note at Exh.9.

5. PW-2 Dr. Girish Gajanand is examined at Exh. 10. Before whom deceased Punambhai was taken at Borsad for treatment wherein a history was given that Punambhai had a fall from 10 feet height and had injuries on right side of the head. He was treated in the said Borsad Private Nursing Home by PW-2 upto 10th of July, 1985 and thereafter referred to SSG Hospital, Baroda.

6. PW-3 Dr. Ashokbhai Punjabhai Patel is examined at Exh.12 who on 11th of July, 1985 being Medical Officer of Municipal General Hospital, at about 11.00 p.m. examined Nanabhai Shivabhai PW5 and PW-6 Sakarabhai Shivabhai with Police Yadi for the injuries they received in the incident. PW-3 stated that PW-5 Nanabhai Shivabhai had complaint of pain over left side shoulder. There was no fracture. While PW-6 Shakarabhai Shivhaibhai had pain on left side of back more on scapular region. No external injury marks were found. In cross-examination, PW-3 admitted that it was not possible to ascertain the truth or otherwise of complaint of pain on particular part of body. He produced on record the injury certificate.

7. PW-4 Exh. 15 Bachubhai Punambhai, son of the deceased is examined, who gave First Information Report before Borsad Police Station. He stated that on the day of the incident i.e. 7th of July, 1985, he had been to village Pandoli and when he returned to village Bochasan and his house, his mother stated that there was a quarrel in the village, and his father was beaten and, therefore, he went to Borsad Nursing Home. His father was unconscious and died on 15.7.1985. According to PW-4 his

father was admitted to hospital at Baroda and when he returned to his house one Kabhai Badabhai told him that the accused had beaten his father and, therefore, on 11.4.1985 he gave an FIR. In cross-examination, he admitted that before PW-2 his brother Chandubhai gave history that their father had a fall from the height of 10 feet. He denied the allegation that his mother on the day of the incident did not inform him about the accused had beaten his father. His complaint is produced at Exh. 16.

8. PW-5 Exh.17 is injured eye witness Nanabhai Shivabhai, according to him, near the house of one Raijibhai Dhulabhai, Raijibhai himself, Shakarabhai and Punambhai were sitting. They also took tea. At that time, accused came there and asked Shakarabhai that why he was showing a currency note of Rs. 10/- to the wife of one Bhimsinh. He inflicted one blow to Shakarabhai and deceased Punambhai intervened and he inflicted two blow of stick to Punambhai and one blow to himself on the neck. He admitted in the cross-examination that he did not go to the Doctor for the treatment on the same day. He admitted that he did not offer any complaint. He stated that on the day of incident, his statement was recorded by the Police. He stated that he informed Chandubhai, son of the deceased, about the incident.

9. PW-6 Exh.18 other eye witness Shakarabhai Shivabhai is examined. He almost stated whatever is stated by PW-5 in his examination-in-chief. In his cross-examination, he stated that he informed about the incident to Chandubhai. Some contradictions are brought on record in his cross-examination.

10. PW-7 Kabhaibhai Badabhai Parmar is examined at Exh. 19, but he is the witness reached to the scene of offence after the incident was over. In examination-in-chief he stated that deceased told him that the accused had beaten him, but in cross-examination he admitted that this fact was not stated by him before the Police.

11. PW-8 Raijibhai Dhulbhai is examined at Exh. 20 but he has not supported the prosecution version though he was not an important witness.

12. PW-9 Bhimsinh Bhandubhai is examined at Exh. 21 but he has also not supported the prosecution version. This witness was also not an eye witness or important witness.

13. PW-10 Chandubhai is examined at Exh.22. He is also a witness who came to know about the incident through his wife and, therefore, reached the scene of offence, and according to him, his father stated that the accused inflicted blows on his head. He admitted in the cross-examination in-chief that before the Doctor of Borsad Private Hospital he did state before the Doctor that his father was injured due to fall from height of 10 feet. In his cross-examination he denied that he did not state before Police the fact that his father informed him that the accused had beaten him. This contradiction is proved by the defence.

14. PW-11 Pankajkumar Chandrashanker who is examined at Exh. 23 who investigated the offence.

15. Taking the overall view of the evidence and re-appreciating the same, it appears that there are no reasons to interfere with the finding of acquittal recorded by the learned Trail Judge. We have carefully gone through the evidence of each witness and documentary evidence produced on record. We have also gone through the judgment of learned Trial Judge and the reasoning given by him for the acquittal of the present respondent of the charges levelled against him. However, the appeal filed against the acquittal must be carefully scrutinised and evaluated. Plenitude of power available to this court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction. Even then in acquittal appeals the court must come to the conclusion that the view taken by the learned Judge while acquitting cannot be the view of a reasonable man. While examining the acquittal appeals, the court must examine the reasons on which the order of acquittal based and must reach to the conclusion that the view taken by the acquitting judge was clearly unreasonable, erroneous and could not have been taken in the facts and circumstances of the case. Unless the appellate court reaches to a concrete conclusion that the reasons given by Trial Judge for the acquittal are not tenable at all, then and then only, the order of acquittal should be interfered with and not lightly or merely because on appreciation of evidence some other view is possible.

16. On independent examination and appreciation of the evidence, the following infirmities in the prosecution case surfaces as to create doubt in the prosecution case.

(i) First Information Report is filed as late as by

four days and no explanation is given by the complainant or the prosecution for such delay.

(ii) The complainant Bachubhai Punamabhai though was knowing that the accused had beaten his father, did not file the complaint on the same day but filed only on 11th of July, 1985, casting doubt seriously on prosecution story.

(iii) On the day of incident when the injured was admitted to Private Nursing Home at Borsad, history was given by son of the deceased Chandubhai that the injuries were received by a fall from a height of 10 feet and while Chandubhai was examined as PW-10, he never offered any explanation about this, but confirmed that he did give this history to the Doctor, who first in point of time received deceased for treatment.

(iv) PW-5 Nanabhai Shivabhai and PW-6 Shakarabhai Shivhaibhai though both were injured witnesses did not attempt to file complaint nor got treatment for their alleged injuries. On the contrary, they stated that Chandubhai, PW-10 son of the deceased was informed about the incident to them. If that be so, then it was not possible for PW-10 Chandubhai to offer history of fall from a height of 10 feet. Both the eye witnesses received treatment only on 11th of July, 1985 after filing of complaint by PW-4 Bachubhai. Therefore, no reliance can be placed on these witnesses.

17. Learned Trial Judge extensively dealt with these aspects in paras 10 and 11 of his judgment which is impugned in this Appeal. The reasons given by learned Trial Judge for the acquittal, as above said, are sound and tenable and not subject to interference in this Appeal. Learned APP Mr. A.J. Desai failed to convince this Court that how the reasoning of the learned Trial Judge were erroneous. On going through the evidence, it is clear that the prosecution failed to prove beyond doubt that the death of Punambhai Hemabhai Parmar was culpable homicide and that the incident occurred in a manner as has been stated by the complainant in complaint at Exh.16 in which appellant was involved appears to be highly doubtful. The two eye witnesses though injured are not reliable at all while assessing their evidence taking into consideration the attending circumstances. In this view of the matter, we find that there is nothing

on the record to come to the conclusion that the finding of acquittal as recorded by the Trial Judge is not tenable. We have also found that the appreciation of the evidence undertaken by the learned Trial Judge does not suffer from any flaw nor the Trial Judge misappreciated the evidence and arrived at grossly unjust conclusion forming unreasonable view against the weight of the evidence so as to reverse the order of acquittal. Therefore, we are unable to interfere with the judgment and order of acquittal impugned in this Appeal and accordingly the Appeal deserves to be dismissed.

18. In the result Appeal fails and stands dismissed. Bail bond of the respondent accused stands cancelled.

(B.J. Shethna, J.)

(J.R. Vora, J.)

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